

EXHIBIT A

KBM

Designation List Report



Brown, Karen

2014-04-23

| | |
|-----------------------|-----------------|
| Defense | 00:53:36 |
| Plaintiff | 00:16:18 |
| TOTAL RUN TIME | 01:09:55 |



Documents linked to video:

655

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P338

P860

P861

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|---------------|---|----------|---------|
| 15:06 - 15:08 | Brown, Karen 2014-04-23 | 00:00:06 | KBM.1 |
| | 15:06 KAREN BROWN, after having been | | |
| | 15:07 duly sworn, was examined and testified | | |
| | 15:08 as follows: | | |
| 15:17 - 15:19 | Brown, Karen 2014-04-23 | 00:00:07 | KBM.2 |
| | 15:17 Could you, please, state your | | |
| | 15:18 full name and current address for the record? | | |
| | 15:19 A. Karen Huter Brown | | |
| 21:03 - 21:11 | Brown, Karen 2014-04-23 | 00:00:17 | KBM.3 |
| | 21:03 Q. Are you currently employed, Ms. | | |
| | 21:04 Brown? | | |
| | 21:05 A. No. | | |
| | 21:06 Q. What was your last employment? | | |
| | 21:07 A. Food Marketing Institute. I | | |
| | 21:08 retired on January 30, 2009. | | |
| | 21:09 Q. How long were you employed by | | |
| | 21:10 the Food Marketing Institute? | | |
| | 21:11 A. 40 years. | | |
| 21:12 - 21:25 | Brown, Karen 2014-04-23 | 00:00:38 | KBM.179 |
| | 21:12 Q. And what was your position at | | |
| | 21:13 FMI when you retired? | | |
| | 21:14 A. I was a senior vice president. | | |
| | 21:15 Q. What were your responsibilities | | |
| | 21:16 in that role as senior vice president? | | |
| | 21:17 A. I had an eclectic portfolio | | |
| | 21:18 that included marketing and communications, | | |
| | 21:19 food safety membership, issues management, | | |
| | 21:20 crisis management. | | |
| | 21:21 Q. Did it include animal welfare? | | |
| | 21:22 A. As an issue, yes. | | |
| | 21:23 Q. How long had you been in -- did | | |
| | 21:24 you hold the role of senior vice president at | | |
| | 21:25 FMI? | | |
| 22:02 - 22:25 | Brown, Karen 2014-04-23 | 00:01:02 | KBM.4 |
| | 22:02 A. I don't recall. Mid '90s. | | |
| | 22:03 Q. And what did you do for FMI | | |
| | 22:04 prior to becoming senior vice president? | | |
| | 22:05 A. I was vice president. | | |
| | 22:06 Q. Were your responsibilities | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|---------------|--|----------|-------|
| | 22:07 substantially similar to those you held as 22:08 senior vice president? 22:09 A. No. 22:10 Q. What did you do as vice 22:11 president? 22:12 A. I was vice president of 22:13 communications. Prior to that, I was vice 22:14 president of consumer affairs. 22:15 Q. And those roles ended in the 22:16 early 1990s? 22:17 A. No. I was vice president of 22:18 consumer affairs until '81, and I was vice 22:19 president of communications until I became a 22:20 senior VP. 22:21 Q. And that was in the early '90s? 22:22 A. I think. 22:23 Q. In your -- over the course of 22:24 your 40-year employment with FMI, did you 22:25 have regular contact with FMI's members? | | |
| 23:03 - 23:03 | Brown, Karen 2014-04-23 | 00:00:01 | KBM.5 |
| | 23:03 THE WITNESS: Yes. | | |
| 23:11 - 23:23 | Brown, Karen 2014-04-23 | 00:00:18 | KBM.6 |
| | 23:11 Q. Well, did you attend meetings 23:12 with them? 23:13 A. Yes. 23:14 Q. And did you attend industry 23:15 functions with them? 23:16 A. Yes. 23:17 Q. Did you talk to them on the 23:18 phone? 23:19 A. Yes. 23:20 Q. Did you acquire a working 23:21 knowledge of the retail food business through 23:22 that contact and during the course of your 23:23 employment with FMI? | | |
| 24:02 - 24:04 | Brown, Karen 2014-04-23 | 00:00:05 | KBM.7 |
| | 24:02 THE WITNESS: My knowledge about 24:03 the retail food industry came from 24:04 many sources. | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|---------------|--|----------|---------|
| 24:07 - 24:11 | Brown, Karen 2014-04-23 24:07 A. Research, education, colleagues 24:08 in -- within FMI, visiting stores, talking 24:09 with members about issues that they were 24:10 concerned about, that FMI could help them 24:11 with. | 00:00:18 | KBM.8 |
| 24:12 - 24:17 | Brown, Karen 2014-04-23 24:12 Q. Through all of those things and 24:13 your contact with FMI's members, did you gain 24:14 an understanding as to how their businesses 24:15 operated? 24:16 A. Individually, no. In general, 24:17 yes. | 00:00:13 | KBM.178 |
| 25:08 - 25:13 | Brown, Karen 2014-04-23 25:08 Q. Through the course of 25:09 your employment at FMI and the contact that 25:10 you had with the members that you just 25:11 described during that employment, did you 25:12 gain an understanding of the concerns they 25:13 had about what was going on in the industry? | 00:00:12 | KBM.9 |
| 25:16 - 25:19 | Brown, Karen 2014-04-23 25:16 THE WITNESS: Mainly the 25:17 concerns that they shared with me were 25:18 concerns that related to their 25:19 customers. | 00:00:06 | KBM.10 |
| 25:21 - 25:22 | Brown, Karen 2014-04-23 25:21 Q. Did you gain an understanding 25:22 of their concerns about animal welfare? | 00:00:04 | KBM.11 |
| 25:25 - 26:03 | Brown, Karen 2014-04-23 25:25 THE WITNESS: From the 26:01 26:02 standpoint as an issue that was 26:03 affecting their customers, yes. | 00:00:05 | KBM.12 |
| 26:05 - 26:06 | Brown, Karen 2014-04-23 26:05 Q. What about as an issue that was 26:06 affecting their businesses? | 00:00:03 | KBM.14 |
| 26:08 - 26:10 | Brown, Karen 2014-04-23 26:08 THE WITNESS: They were most | 00:00:05 | KBM.15 |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|---------------|--|----------|--------|
| | 26:09 concerned about how it was affecting 26:10 their customers. | | |
| 26:12 - 26:18 | Brown, Karen 2014-04-23 | 00:00:26 | KBM.16 |
| | 26:12 Q. Why? 26:13 A. They were not -- they were not 26:14 experiencing -- they had some letters from 26:15 PETA that they had received, and that 26:16 concerned them as to how to answer it, and 26:17 how it would affect what PETA's actions may 26:18 have contributed to their own public image. | | |
| 28:13 - 28:15 | Brown, Karen 2014-04-23 | 00:00:08 | KBM.17 |
| | 28:13 My question to you is, when you 28:14 say "their own public image," you're talking 28:15 about the public image of your members? | | |
| 28:18 - 28:19 | Brown, Karen 2014-04-23 | 00:00:03 | KBM.18 |
| | 28:18 THE WITNESS: Correct. The 28:19 industry as a whole. | | |
| 28:21 - 28:24 | Brown, Karen 2014-04-23 | 00:00:05 | KBM.19 |
| | 28:21 Q. When you say "the industry," 28:22 what industry are you referring to? 28:23 A. I'm talking about the 28:24 supermarket industry. | | |
| 29:03 - 29:14 | Brown, Karen 2014-04-23 | 00:00:42 | KBM.20 |
| | 29:03 Who were FMI's members? 29:04 A. FMI's members were large 29:05 chains, regional chains, small companies, 29:06 independent operators, cooperative 29:07 wholesalers and voluntary wholesalers. 29:08 Q. In what industry? 29:09 A. The supermarket industry. 29:10 Q. Now, through your contact with 29:11 FMI's members over the 40 years that you were 29:12 employed by FMI, did you gain an 29:13 understanding of those member's views on 29:14 animal welfare? | | |
| 29:16 - 29:20 | Brown, Karen 2014-04-23 | 00:00:23 | KBM.21 |
| | 29:16 THE WITNESS: Animal welfare was 29:17 a fairly new issue. It did not span 29:18 40 years. The issue became a public | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|---------------|---|----------|--------|
| | 29:19 issue for food retail in general in 29:20 the late '90s, beginning of 2000. | | |
| 29:22 - 30:02 | Brown, Karen 2014-04-23 | 00:00:13 | KBM.22 |
| | 29:22 Q. And once it became an issue for 29:23 FMI's members, in the course of your 29:24 employment at FMI, did you gain an 29:25 understanding of those members' views on 30:01 30:02 animal welfare? | | |
| 30:07 - 30:15 | Brown, Karen 2014-04-23 | 00:00:29 | KBM.23 |
| | 30:07 A. They didn't really express 30:08 their views. They were looking to FMI to 30:09 help them approach the issue in a way that 30:10 would enhance or improve the humane handling 30:11 of farm animals. 30:12 Q. And what was your understanding 30:13 as to why those members were looking to FMI 30:14 to help them approach the animal welfare 30:15 issue? | | |
| 30:18 - 30:25 | Brown, Karen 2014-04-23 | 00:00:34 | KBM.24 |
| | 30:18 THE WITNESS: They had an 30:19 example from the quick serve industry 30:20 where the animal rights organizations 30:21 were attacking them publicly and 30:22 asking them to take specific actions. 30:23 The response of some of the members of 30:24 the quick serve industry was to come 30:25 up with specific guidelines that they | | |
| 31:02 - 31:20 | Brown, Karen 2014-04-23 | 00:01:07 | KBM.25 |
| | 31:02 as an individual company, I'm not 31:03 talking about the supermarket industry 31:04 now, I'm talking about the quick serve 31:05 restaurant industry, to come up with 31:06 specific actions that would enhance 31:07 the humane handling of farm animals, 31:08 particularly in the area of space 31:09 allocation. Because there were many 31:10 different proposals or requirements by 31:11 individual companies in the quick | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|---------------|--|----------|--------|
| | 31:12 serve industry, the supermarket 31:13 industry at that time was under the 31:14 radar, and they felt that it would be 31:15 a better approach to try to get ahead 31:16 of the issue in a way that would 31:17 improve humane handling and also give 31:18 them a story they could tell their 31:19 customers about what they were doing 31:20 in the area of humane handling. | | |
| 32:05 - 32:21 | Brown, Karen 2014-04-23 | 00:00:58 | KBM.26 |
| | 32:05 Q. Do you have an understanding of 32:06 why they wanted to get ahead of the issue? 32:07 A. They certainly wanted to be 32:08 able to have an approach that was going to 32:09 enhance the humane handling of animals and to 32:10 be able to publicize what their approach was 32:11 going to be so that their customers would 32:12 know what their involvement was. There were 32:13 public campaigns being undertaken, executed 32:14 against the members of the quick serve 32:15 industry by PETA and other animal rights 32:16 organizations, and that's a very 32:17 uncomfortable position for a company to be 32:18 in, and it makes it difficult for them to 32:19 tell their own story and play catch up. 32:20 Q. And was that what was happening 32:21 to your members? | | |
| 32:23 - 32:25 | Brown, Karen 2014-04-23 | 00:00:04 | KBM.27 |
| | 32:23 THE WITNESS: Our members were 32:24 not at that point on the -- being 32:25 attacked. | | |
| 33:03 - 33:03 | Brown, Karen 2014-04-23 | 00:00:02 | KBM.28 |
| | 33:03 Q. But they wanted to avoid that? | | |
| 33:06 - 33:06 | Brown, Karen 2014-04-23 | 00:00:01 | KBM.29 |
| | 33:06 THE WITNESS: Yes. | | |
| 33:08 - 33:23 | Brown, Karen 2014-04-23 | 00:00:38 | KBM.30 |
| | 33:08 Q. You mentioned before, you said 33:09 "particularly in the area of space 33:10 allocation." | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|---------------|---|----------|--------|
| | <p>33:11 A. Correct.</p> <p>33:12 Q. What was it about space allocation that made that a focus for your members?</p> <p>33:13 A. It wasn't that it was the focus. But it was the -- it was the -- one of the issues that was front and center from the standpoint of the animal rights organizations. They were concerned about gestation stalls with pregnant sows. They were concerned about space in the egg laying industry from the standpoint of the cages that the chickens were being raised in.</p> | | |
| 34:06 - 34:13 | Brown, Karen 2014-04-23 | 00:00:22 | KBM.31 |
| | <p>34:06 Q. Did it have an animal welfare program as of the time you departed in 2009?</p> <p>34:07 A. It had established a program, yes.</p> <p>34:08 Q. When did FMI first become involved in animal welfare?</p> <p>34:09 A. In my recollection, the end of 2000.</p> | | |
| 41:09 - 41:25 | Brown, Karen 2014-04-23 | 00:00:48 | KBM.32 |
| | <p>41:09 Q. Why did FMI create an animal welfare program?</p> <p>41:10 A. FMI created an animal welfare program because it wanted to enhance the humane handling of farm animals.</p> <p>41:11 Q. I'd like to direct your attention to a -- to the first page of this document that's been marked as Brown-2. If you could look at the third paragraph. It reads, "In 2000, animal rights organizations began to demand that individual restaurant chain companies force their suppliers to follow specific animal welfare guidelines developed by activist organizations."</p> <p>41:12 Q. Is that an accurate statement,</p> <p>41:13 A. Yes.</p> | | |

KBM

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| 41:14 - 41:25 | Brown, Karen 2014-04-23 41:14 Q. I'd like to direct your 41:15 attention to a -- to the first page of this 41:16 document that's been marked as Brown-2. If 41:17 you could look at the third paragraph. It 41:18 reads, "In 2000, animal rights organizations 41:19 began to demand that individual restaurant 41:20 chain companies force their suppliers to 41:21 follow specific animal welfare guidelines 41:22 developed by activist organizations." 41:23 Is that an accurate statement, 41:24 Ms. Brown? 41:25 A. Yes. | 00:00:30 | KBM.177 |
| 42:02 - 42:16 | Brown, Karen 2014-04-23 42:02 Q. And then I'd like you to turn 42:03 now to the next page, page 656. I'd like to 42:04 direct your attention to the last sentence of 42:05 the partial paragraph that begins that page. 42:06 The sentence reads, "Believing their tactics 42:07 were achieving success, the activists began 42:08 to approach supermarket chains in the USA, 42:09 making similar demands." 42:10 A. Yes. 42:11 Q. Is that an accurate statement? 42:12 A. Yes. 42:13 Q. Were FMI's members among the 42:14 recipients of the demands that you referred 42:15 to in that sentence? 42:16 A. Yes. | 00:00:33 | KBM.33 |
| 43:07 - 43:19 | Brown, Karen 2014-04-23 43:07 Q. So the question was, what was 43:08 the demands that FMI's animal activists were 43:09 making of FMI's members? 43:10 A. I don't recall specifically. 43:11 Q. Do you recall generally? 43:12 A. No. 43:13 Q. Were they animal welfare 43:14 related demands? 43:15 A. Yes. 43:16 Q. Were they asking the members to | 00:00:24 | KBM.34 |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|---------------|--|----------|--------|
| | 43:17 provide more space, to require their 43:18 suppliers to provide adequate space for 43:19 animals, for example? | | |
| 43:21 - 43:22 | Brown, Karen 2014-04-23 | 00:00:02 | KBM.35 |
| | 43:21 THE WITNESS: I don't recall 43:22 specifically. | | |
| 43:24 - 43:25 | Brown, Karen 2014-04-23 | 00:00:06 | KBM.36 |
| | 43:24 Q. I'd like you to turn to the 43:25 exhibit that has been marked as Brown-3. | | |
| 44:08 - 44:12 | Brown, Karen 2014-04-23 | 00:00:08 | KBM.37 |
| | 44:08 Q. Did you draft this document? 44:09 A. Yes. 44:10 Q. And did you draft it in your 44:11 role as senior vice president of FMI? 44:12 A. Yes. | | |
| 45:16 - 45:19 | Brown, Karen 2014-04-23 | 00:00:05 | KBM.38 |
| | 45:16 When you drafted this 45:17 presentation, did you attempt to be truthful 45:18 and accurate? 45:19 A. Yes. | | |
| 48:19 - 48:25 | Brown, Karen 2014-04-23 | 00:00:18 | KBM.39 |
| | 48:19 Q. So it outlines the steps that 48:20 were taken in connection with the development 48:21 and implementation of FMI's animal welfare 48:22 policy and program? 48:23 A. Yes. 48:24 Q. If you turn to the next page 48:25 which bears the Bates number 3055 at the | | |
| 49:02 - 49:25 | Brown, Karen 2014-04-23 | 00:01:03 | KBM.40 |
| | 49:02 bottom. 49:03 A. Yes. 49:04 Q. The first bullet point on that 49:05 page reads, "Five of FMI's largest members 49:06 ask FMI to develop a policy and program to 49:07 address animal welfare." This is on a slide 49:08 that is -- bears the legend December 2000. 49:09 Do you see that? 49:10 A. Yes. 49:11 Q. Is that an accurate statement? | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|---------------|---|----------|--------|
| | 49:12 A. Yes. 49:13 Q. Who were those five members, 49:14 Ms. Brown? 49:15 A. Kroger, Albertsons, Safeway, 49:16 Ahold, and I don't remember the fifth. 49:17 Q. Was the fifth one Wal-Mart? 49:18 A. It could have been. Wal-Mart 49:19 was definitely involved in our program. 49:20 Q. Why don't you turn back to what 49:21 was marked as Brown-2, the article. I'll 49:22 direct your attention to page 656. The first 49:23 full paragraph on that page. The second 49:24 sentence in that paragraph reads, "To this 49:25 end, late in 2000, the Food Marketing | | |
| 50:02 - 50:14 | Brown, Karen 2014-04-23 | 00:00:30 | KBM.41 |
| | 50:02 Institute...was asked by five member 50:03 companies (Ahold...; Albertsons...; ; 50:04 Kroger...; Safeway...; and Wal-Mart 50:05 Stores...) to develop a voluntary policy and 50:06 programme to address animal welfare that the 50:07 entire supermarket industry could embrace." 50:08 Does that refresh your 50:09 recollection as to whether Wal-Mart was the 50:10 fifth? 50:11 A. Yes. 50:12 Q. And these were five of FMI's 50:13 largest members? 50:14 A. Yes. | | |
| 50:19 - 50:22 | Brown, Karen 2014-04-23 | 00:00:08 | KBM.42 |
| | 50:19 Q. The bullet point says the 50:20 members asked FMI to develop a policy. Did 50:21 they come to you with that request? 50:22 A. Yes. | | |
| 51:03 - 51:12 | Brown, Karen 2014-04-23 | 00:00:35 | KBM.43 |
| | 51:03 Q. But what do you recall sitting 51:04 here today? 51:05 A. There was a meeting of members 51:06 which is not uncommon, and I was at the 51:07 meeting, and three of the companies' 51:08 representatives asked me if I would look into | | |

KBM

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|---------------|---|----------|--------|
| | 51:09 developing a policy and a program to address 51:10 animal welfare. 51:11 Q. Who were those three? 51:12 A. Kroger, Safeway and Albertsons. | | |
| 52:15 - 52:18 | Brown, Karen 2014-04-23 | 00:00:08 | KBM.44 |
| | 52:15 Q. Did they tell you why they were 52:16 interested in having FMI look into developing 52:17 a policy and program about animal welfare at 52:18 that time? | | |
| 52:21 - 52:25 | Brown, Karen 2014-04-23 | 00:00:14 | KBM.45 |
| | 52:21 They were very concerned about 52:22 the public media attention and the manner in 52:23 which it was being used against individual 52:24 companies in the quick serve industry. 52:25 Q. Were they concerned that it | | |
| 53:02 - 53:04 | Brown, Karen 2014-04-23 | 00:00:08 | KBM.46 |
| | 53:02 would be used against supermarkets like 53:03 themselves? 53:04 A. Yes. | | |
| 55:20 - 55:25 | Brown, Karen 2014-04-23 | 00:00:23 | KBM.47 |
| | 55:20 THE WITNESS: It was not 55:21 uncommon for the members to use the 55:22 trade association's expertise and help 55:23 in developing a response to an issue 55:24 that they all had to deal with. So 55:25 you could have an industry position | | |
| 56:02 - 56:16 | Brown, Karen 2014-04-23 | 00:00:49 | KBM.48 |
| | 56:02 and then -- so that was a very common 56:03 practice within the association, 56:04 within all associations. It's one of 56:05 the reasons why associations are so 56:06 valuable to their individual members. 56:07 Their members are spending their time 56:08 running their businesses, and the 56:09 association expertise in the areas of 56:10 public affairs and issues management 56:11 were very helpful, are very helpful in 56:12 developing a position that all of the 56:13 members can then use as opposed to | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|---------------|---|----------|--------|
| | 56:14 having to go about that work 56:15 themselves and take that time away 56:16 from their business. | | |
| 57:05 - 57:09 | Brown, Karen 2014-04-23 | 00:00:10 | KBM.49 |
| | 57:05 Q. I said so is it fair to say 57:06 that these members were looking to FMI to 57:07 develop a single industry approach to the 57:08 animal welfare issues they were concerned 57:09 about? | | |
| 57:11 - 57:13 | Brown, Karen 2014-04-23 | 00:00:08 | KBM.50 |
| | 57:11 THE WITNESS: They wanted FMI to 57:12 work with them on developing an 57:13 industry position. | | |
| 58:11 - 58:16 | Brown, Karen 2014-04-23 | 00:00:16 | KBM.51 |
| | 58:11 Q. Did you have an understanding 58:12 as to whether these members perceived a 58:13 benefit to having a single industry approach 58:14 as opposed -- a single industry approach to 58:15 animal welfare as opposed to multiple 58:16 approaches by individual companies? | | |
| 58:18 - 59:02 | Brown, Karen 2014-04-23 | 00:00:23 | KBM.53 |
| | 58:18 THE WITNESS: The whole industry 58:19 benefits from that approach. 58:20 Certainly suppliers and producers 58:21 would benefit if there is a common 58:22 industry position on an issue that 58:23 affects them so directly, and, 58:24 therefore, they do not have to deal 58:25 with different requests, different 59:01 59:02 specifications on the same issue. | | |
| 60:14 - 60:17 | Brown, Karen 2014-04-23 | 00:00:13 | KBM.54 |
| | 60:14 Q. Do you have an understanding as 60:15 to why -- well, as to whether the produce -- 60:16 whether the FMI's members asked FMI to reach 60:17 out to the producer trade associations? | | |
| 60:19 - 60:25 | Brown, Karen 2014-04-23 | 00:00:22 | KBM.55 |
| | 60:19 THE WITNESS: Part of the policy 60:20 was to collaborate with the producer | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|---------------|--|----------|--------|
| | 60:21 industry. This was an issue which 60:22 affected the producers directly. And 60:23 if FMI was going to develop a position 60:24 on the issue, we felt it important to 60:25 let our producers know what we were | | |
| 61:02 - 61:13 | Brown, Karen 2014-04-23 61:02 developing. So there was a meeting 61:03 that was held. It was hosted by the 61:04 American Meat Institute. And all of 61:05 the producer organizations were 61:06 invited to attend. And at the 61:07 meeting, we told them that we would be 61:08 developing a position, a board 61:09 position, that we would be developing 61:10 a group of animal welfare experts, and 61:11 that we would be collaborating with 61:12 them on an approach to the issue of 61:13 animal welfare. | 00:00:35 | KBM.56 |
| 64:11 - 64:25 | Brown, Karen 2014-04-23 64:11 Q. Was the concept of coordinating 64:12 with producer organizations part of that 64:13 policy and program that you just referred to? 64:14 A. Yes. Yes. 64:15 Q. And was that policy and program 64:16 approved by FMI's Board of Directors? 64:17 A. Yes. 64:18 Q. And who makes up FMI's Board of 64:19 Directors? 64:20 A. It's representative of all of 64:21 the aspects of our membership. 64:22 Q. So it's FMI members -- 64:23 A. FMI members. 64:24 Q. -- who sit on the board? 64:25 A. That's correct. | 00:00:25 | KBM.57 |
| 65:02 - 65:08 | Brown, Karen 2014-04-23 65:02 Q. Let's go back to the five 65:03 members who approached you, approached FMI to 65:04 develop an animal welfare program. Did FMI's 65:05 other members, aside from those five, support 65:06 that animal welfare effort that was initiated | 00:00:17 | KBM.58 |

KBM

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|---------------|---|----------|--------|
| | 65:07 by those five members? | | |
| | 65:08 A. Yes. | | |
| 66:04 - 67:06 | Brown, Karen 2014-04-23 | 00:01:18 | KBM.59 |
| | 66:04 THE WITNESS: Let me clarify | | |
| | 66:05 something. FMI used several means of | | |
| | 66:06 informing its large member base of | | |
| | 66:07 what it was doing. And that was done | | |
| | 66:08 through our weekly mailings. So | | |
| | 66:09 anything that we would have been doing | | |
| | 66:10 in the area of a board policy, in the | | |
| | 66:11 area of program development, | | |
| | 66:12 educational programs, research | | |
| | 66:13 programs, issues management, all of | | |
| | 66:14 that was shared with our members on a | | |
| | 66:15 weekly basis through a weekly mailing. | | |
| | 66:16 It was also made a part of our Web | | |
| | 66:17 site, and in certain circumstances | | |
| | 66:18 there were members only sections | | |
| | 66:19 primarily because there was government | | |
| | 66:20 relations information, et cetera, that | | |
| | 66:21 each association likes to keep to | | |
| | 66:22 themselves from the standpoint of | | |
| | 66:23 strategy. But our members were fully | | |
| | 66:24 informed all the time. Did they read | | |
| | 66:25 every single word that we sent them, | | |
| | 67:01 | | |
| | 67:02 probably not. But we definitely | | |
| | 67:03 informed our members on a regular | | |
| | 67:04 basis through a communication system | | |
| | 67:05 that we had developed that reached all | | |
| | 67:06 1,500 of them. | | |
| 72:21 - 72:25 | Brown, Karen 2014-04-23 | 00:00:07 | KBM.61 |
| | 72:21 Q. Ms. Brown, I'm just asking you | | |
| | 72:22 if you have an understanding sitting here | | |
| | 72:23 today as to why they wanted a single industry | | |
| | 72:24 approach? | | |
| | 72:25 A. Yes. | | |
| 73:02 - 73:02 | Brown, Karen 2014-04-23 | 00:00:02 | KBM.62 |
| | 73:02 Q. And what is that understanding? | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|---------------|---|----------|--------|
| 73:08 - 73:15 | Brown, Karen 2014-04-23 | 00:00:18 | KBM.63 |
| | 73:08 THE WITNESS: That they could 73:09 avoid having any company singled out 73:10 specifically by activist groups, 73:11 individual companies don't have to 73:12 duplicate efforts. And that would 73:13 also apply to the producer community. 73:14 And individual companies are not 73:15 leveraged by the actions of one. | | |
| 73:17 - 73:25 | Brown, Karen 2014-04-23 | 00:00:26 | KBM.64 |
| | 73:17 Q. What do you mean by that, that 73:18 individual companies are not leveraged by the 73:19 actions of one? 73:20 A. Company A did, if PETA comes 73:21 to -- which they did with the quick serve 73:22 industry, company A did X, you know, what are 73:23 you going to do about it, are you going to do 73:24 better, are you going to do less. Trying to 73:25 up the game. That is a common tactic on the | | |
| 74:02 - 74:10 | Brown, Karen 2014-04-23 | 00:00:25 | KBM.65 |
| | 74:02 part of activist organizations. That is what 74:03 they were trying -- that was one of the 74:04 things they were trying to avoid. 74:05 Instead, FMI dealt with the 74:06 activist organizations, and FMI on behalf of 74:07 its members, described what our position was, 74:08 what our policy was, and the efforts that we 74:09 had under way to increase the humane handling 74:10 for farm animals. | | |
| 74:24 - 74:25 | Brown, Karen 2014-04-23 | 00:00:04 | KBM.66 |
| | 74:24 Q. Ms. Brown, I'm going to show 74:25 you a document that's been marked as Brown-5. | | |
| 75:02 - 75:25 | Brown, Karen 2014-04-23 | 00:00:54 | KBM.67 |
| 🔗 670.1 | 75:02 It's an e-mail chain bearing the Bates number 75:03 FMI-001078 to 79. My question to you is 75:04 whether you recognize this document? 75:05 A. I don't recall the document 75:06 specifically. I mean, I recognize it, it has 75:07 my name on it, but I don't recall the | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
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| | <p>75:08 correspondence.</p> <p>75:09 Q. Is this an e-mail chain between</p> <p>75:10 you and Lynn Marmer?</p> <p>75:11 A. Uh-huh.</p> <p>75:12 Q. Is Ms. Marmer one of the</p> <p>75:13 individuals who attended the meeting in late</p> <p>75:14 2000?</p> <p>75:15 A. Yes, I already answered that.</p> <p>75:16 Q. And she's from Kroger?</p> <p>75:17 A. Yes, I already answered that.</p> <p>75:18 Q. Did you receive the first</p> <p>75:19 e-mail in the chain from Ms. Marmer on or</p> <p>75:20 about March 20, 2002?</p> <p>75:21 A. I have no idea. It is -- I</p> <p>75:22 don't know. I mean, there's a date on here,</p> <p>75:23 so I'm assuming the date is correct.</p> <p>75:24 Q. Do you have any reason to</p> <p>75:25 believe that you did not receive that e-mail</p> | | |
| 76:02 - 76:07 | Brown, Karen 2014-04-23 | 00:00:16 | KBM.68 |
| | <p>76:02 from Ms. Marmer on or about March 20, 2002?</p> <p>76:03 A. No.</p> <p>76:04 Q. And did you respond to</p> <p>76:05 Ms. Marmer as indicated in the second e-mail</p> <p>76:06 in the chain?</p> <p>76:07 A. That's what it says.</p> | | |
| 78:11 - 78:25 | Brown, Karen 2014-04-23 | 00:00:26 | KBM.69 |
| 🔗 670.1.2 | <p>78:11 Q. About halfway down her e-mail</p> <p>78:12 she writes, I explained that there are two</p> <p>78:13 purposes for having an industry-wide group.</p> <p>78:14 Do you see that?</p> <p>78:15 A. Yes.</p> <p>78:16 Q. One of the purposes she says</p> <p>78:17 is, "...to not allow advocacy groups to pit</p> <p>78:18 one retailer against another..."</p> <p>78:19 Do you see that?</p> <p>78:20 A. Okay.</p> <p>78:21 Q. Is that -- did you understand</p> <p>78:22 that to be the concept that you just</p> <p>78:23 explained to me about the concern about the</p> <p>78:24 animal activists leveraging one company</p> | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
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| | 78:25 against another I think are the words you | | |
| 79:02 - 79:09 | Brown, Karen 2014-04-23 | 00:00:10 | KBM.70 |
| ☒ Clear | 79:02 used? 79:03 A. I suppose you could use all of 79:04 those terms. 79:05 Q. Did you have a different 79:06 understanding as to what she meant here by 79:07 not allowing advocacy groups to pit one 79:08 retailer against another? 79:09 A. No. | | |
| 87:19 - 87:21 | Brown, Karen 2014-04-23 | 00:00:05 | KBM.71 |
| | 87:19 Q. Did FMI form a member committee 87:20 related to animal welfare? 87:21 A. Yes. | | |
| 88:17 - 88:25 | Brown, Karen 2014-04-23 | 00:00:21 | KBM.72 |
| | 88:17 Q. So the role of the member 88:18 committee was to give FMI direction and 88:19 guidance on animal welfare issues? 88:20 A. React to or advise us on 88:21 whether we -- what we were developing was 88:22 going in the right direction. 88:23 Q. Did you have a role vis-a-vis 88:24 the member committee? 88:25 A. Yes. | | |
| 89:02 - 89:03 | Brown, Karen 2014-04-23 | 00:00:03 | KBM.73 |
| | 89:02 Q. What was that role? 89:03 A. I managed the committee. | | |
| 91:14 - 91:25 | Brown, Karen 2014-04-23 | 00:00:37 | KBM.74 |
| | 91:14 Q. What was the purpose of these 91:15 meetings? 91:16 A. To -- the first initial meeting 91:17 was to let the producer community know what 91:18 our approach was going to be. And there were 91:19 individual meetings with producer 91:20 organizations to talk with them specifically 91:21 about recommendations that were being made by 91:22 our expert panel. And the expert panel 91:23 consisted of veterinarians, animal scientists 91:24 and an animal welfare advocate who was not | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
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| | 91:25 part of any of the activist organizations. | | |
| 92:02 - 92:05 | Brown, Karen 2014-04-23 | 00:00:07 | KBM.75 |
| | 92:02 Q. Was United Egg Producers one of | | |
| | 92:03 the producer organizations with whom FMI | | |
| | 92:04 met -- | | |
| | 92:05 A. Yes. | | |
| 95:02 - 95:04 | Brown, Karen 2014-04-23 | 00:00:13 | KBM.76 |
| | 95:02 Q. Did the board approve the | | |
| | 95:03 policy and program unanimously? | | |
| | 95:04 A. Yes. All 81 of them. | | |
| 96:15 - 96:25 | Brown, Karen 2014-04-23 | 00:00:32 | KBM.77 |
| | 96:15 Q. Did FMI form a panel of animal | | |
| | 96:16 welfare experts? | | |
| | 96:17 A. Yes. | | |
| | 96:18 Q. What was the role of that | | |
| | 96:19 expert panel? | | |
| | 96:20 A. That panel, since retailers and | | |
| | 96:21 certainly not the FMI staff have any | | |
| | 96:22 scientific standing to develop any specific | | |
| | 96:23 ideas about how to humanely handle farm | | |
| | 96:24 animals, part of our program was to put | | |
| | 96:25 together a panel of people who did know, and | | |
| 97:02 - 97:20 | Brown, Karen 2014-04-23 | 00:01:18 | KBM.78 |
| | 97:02 they were animal scientists and veterinarians | | |
| | 97:03 primarily. | | |
| | 97:04 Q. Did FMI and its members rely on | | |
| | 97:05 the expertise of that panel in developing | | |
| | 97:06 FMI's animal welfare program? | | |
| | 97:07 A. FMI's program was as it's | | |
| | 97:08 stated in these components, and the part of | | |
| | 97:09 that was for the experts to review the -- | | |
| | 97:10 what the producer organizations had at the | | |
| | 97:11 time as far as humane handling of animals. | | |
| | 97:12 So their role was to review it, to lay that | | |
| | 97:13 against the scientific consensus at the time. | | |
| | 97:14 They were all well known, some world | | |
| | 97:15 renowned, specific expertise for each species | | |
| | 97:16 and they would review what the procedures | | |
| | 97:17 were that each producer group was using as | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|-----------------|--|----------|--------|
| | 97:18 far as handling your animals, and they would 97:19 make recommendations in some cases for ways 97:20 to enhance or improve that. | | |
| 98:02 - 98:04 | Brown, Karen 2014-04-23 | 00:00:11 | KBM.79 |
| | 98:02 Q. Well, am I correct that at some 98:03 point FMI made a decision as to whether or 98:04 not to endorse specific producer guidelines? | | |
| 98:06 - 98:22 | Brown, Karen 2014-04-23 | 00:00:52 | KBM.80 |
| | 98:06 THE WITNESS: There's a 98:07 semantical issue here, and all of our 98:08 documents that we would send to our 98:09 members, the "we" is a royal we, and 98:10 FMI did not endorse anything 98:11 specifically. Our experts endorsed. 98:12 And if our experts endorsed it, then 98:13 we would say our experts have endorsed 98:14 it. And then the individual companies 98:15 could decide themselves whether or not 98:16 that was something that they would use 98:17 with their individual producers or 98:18 suppliers or not. But we didn't 98:19 develop guidelines, we didn't endorse 98:20 anything. Our experts endorsed. So I 98:21 think that's really important to 98:22 clarify. | | |
| 106:11 - 106:25 | Brown, Karen 2014-04-23 | 00:00:42 | KBM.81 |
| | 106:11 Q. Were the UEP guidelines for egg 106:12 laying hens one of the sets of industry 106:13 guidelines that were reviewed by FMI's expert 106:14 advisory panel? 106:15 A. Yes. And I'll tell you, 106:16 everyone was very impressed at how far along 106:17 UEP was. They were way ahead of the game. 106:18 They had very specific guidelines. They had 106:19 been working on it for some time. They had 106:20 their own expert panel. As a matter of fact, 106:21 Joy Mench who is the world renowned poultry 106:22 expert at UC Davis was one of our advisors 106:23 because we thought that she would be 106:24 extremely helpful to us. So, yeah, UEP had | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|-----------------|--|----------|--------|
| | 106:25 very specific guidelines. They had guidance | | |
| 107:02 - 107:02 | Brown, Karen 2014-04-23 | 00:00:08 | KBM.82 |
| | 107:02 to their members on how to use them. | | |
| 107:03 - 107:14 | Brown, Karen 2014-04-23 | 00:00:39 | KBM.83 |
| | 107:03 Q. Do you recall whether FMI's | | |
| | 107:04 expert advisory panel identified any gaps -- | | |
| | 107:05 A. Yes. | | |
| | 107:06 Q. -- in the UEP guidelines? | | |
| | 107:07 A. Yes. | | |
| | 107:08 Q. And what were those gaps that | | |
| | 107:09 were identified? | | |
| | 107:10 A. Forced molting, not feeding the | | |
| | 107:11 chickens in order to execute a forced molt. | | |
| | 107:12 Ammonia levels higher than what was required | | |
| | 107:13 by EPA for workers. Those are two that stand | | |
| | 107:14 out. | | |
| 107:15 - 107:25 | Brown, Karen 2014-04-23 | 00:00:38 | KBM.84 |
| | 107:15 Q. What about the schedule for | | |
| | 107:16 phasing in cage space requirements? | | |
| | 107:17 A. There was an interest on the | | |
| | 107:18 part of the experts in speeding that up if | | |
| | 107:19 they could. You have to understand that when | | |
| | 107:20 you get 12 chickens in a space this big, | | |
| | 107:21 space allocation becomes an issue. And it | | |
| | 107:22 becomes an issue particularly if the cages | | |
| | 107:23 are stacked one on top of the other. The | | |
| | 107:24 people on the top -- or chickens on the top | | |
| | 107:25 are okay, but as the excrement goes down, you | | |
| 108:02 - 108:10 | Brown, Karen 2014-04-23 | 00:00:22 | KBM.85 |
| | 108:02 don't want it on the bottom. So the issue of | | |
| | 108:03 space allocation in all species is an | | |
| | 108:04 important one. | | |
| | 108:05 Q. And that was important to FMI's | | |
| | 108:06 members? | | |
| | 108:07 A. It was important to FMI's | | |
| | 108:08 members from the perspective that this was an | | |
| | 108:09 issue that the animal rights organizations | | |
| | 108:10 were most specifically focusing on. | | |
| 113:03 - 113:06 | Brown, Karen 2014-04-23 | 00:00:09 | KBM.86 |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|-----------------|---|----------|--------|
| | 113:03 Q. So it was important that 113:04 whatever was recommended be something that 113:05 the producer community could actually do and 113:06 implement. Is that fair to say? | | KBM.86 |
| 113:10 - 113:22 | Brown, Karen 2014-04-23 | 00:00:33 | KBM.87 |
| | 113:10 THE WITNESS: They wanted to 113:11 make sure that there wasn't anything 113:12 that the experts would recommend that 113:13 would be impossible to execute or 113:14 would be ridiculous to execute. In 113:15 Europe there was a recommendation that 113:16 pigs be given balls to play with. We 113:17 don't necessarily think that pregnant 113:18 sows should be in a gestation crate 113:19 that is too small for them so they 113:20 can't move during their pregnancy, but 113:21 giving the pigs a ball maybe is going 113:22 too far. | | |
| 122:03 - 122:06 | Brown, Karen 2014-04-23 | 00:00:07 | KBM.88 |
| | 122:03 Q. Did FMI reach out to UEP as one 122:04 of the producer organizations to discuss 122:05 UEP's Animal Welfare Guidelines? 122:06 A. Yes. | | |
| 122:19 - 122:25 | Brown, Karen 2014-04-23 | 00:00:13 | KBM.89 |
| | 122:19 Q. Was there one meeting or 122:20 multiple meetings to talk specifically about 122:21 how to enhance the UEP guidelines? 122:22 A. There was more than one 122:23 meeting. 122:24 Q. Who from FMI attended those 122:25 meetings? | | |
| 123:02 - 123:11 | Brown, Karen 2014-04-23 | 00:00:24 | KBM.90 |
| | 123:02 A. It depended. Sometimes we 123:03 would bring in Joy Mench because these 123:04 were -- this was feedback from the experts. 123:05 Our CEO sat in on some of the meetings. Jill 123:06 sat in on all the meetings. Terrie Dort of 123:07 NCCR sat in on the meetings. 123:08 Q. Were you present for all of the | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|-----------------|---|----------|--------|
| | 123:09 meetings? 123:10 A. I was present for all of the 123:11 meetings, yes. | | |
| 124:22 - 124:25 | Brown, Karen 2014-04-23 | 00:00:13 | KBM.91 |
| 🔗 658.1 | 124:22 Q. Ms. Brown, do you recognize the 124:23 document that has been marked as Brown-8? 124:24 A. In the context of I see it's an 124:25 FMI document sent by me, yes, I recognize it. | | |
| 125:02 - 125:25 | Brown, Karen 2014-04-23 | 00:00:52 | KBM.92 |
| 🔗 658.1.1 | 125:02 Q. And did you create this 125:03 document in your role as senior vice 125:04 president at FMI? 125:05 A. Yes. 125:06 Q. And is this a document that you 125:07 faxed to the individuals who are listed in 125:08 the fax to and cc columns on the front page 125:09 of the document? 125:10 A. Yes. 125:11 Q. Who are the individuals to whom 125:12 this document was faxed? 125:13 A. Executives with our member 125:14 companies. 125:15 Q. And was this document created 125:16 by you on or about August 13, 2001? 125:17 A. That's what it says. 125:18 Q. And was that when, 125:19 approximately when it was sent? 125:20 A. It would have been sent on that 125:21 day. 125:22 Q. If you can turn to the second 🔗 658.2 125:23 and third pages of this document which bear 125:24 the Bates numbers FMI-001100 through 01. 125:25 They're entitled FLIP CHART NOTES July 9, | | |
| 126:02 - 126:03 | Brown, Karen 2014-04-23 | 00:00:05 | KBM.93 |
| 🔗 658.2.2 | 126:02 2001 - Chicago, Illinois. Do you see that? 126:03 A. Yes. | | |
| 127:05 - 127:25 | Brown, Karen 2014-04-23 | 00:00:49 | KBM.94 |
| | 127:05 Q. I want to direct your attention 127:06 to the egg laying hens portion of this | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
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| 🔗 658.2.3 | <p>127:07 document. It says, "EGG LAYING HEN ISSUES."</p> <p>127:08 A. Yes.</p> <p>127:09 Q. And it lists multiple issues.</p> <p>127:10 A. Yes.</p> <p>127:11 Q. Are these the gaps that were</p> <p>127:12 identified by the expert advisory panel that</p> <p>127:13 FMI put together?</p> <p>127:14 A. These would have been issues</p> <p>127:15 that the experts thought should be improved</p> <p>127:16 or changed.</p> <p>127:17 Q. And I think you referred to</p> <p>127:18 those as gaps. Is that right?</p> <p>127:19 A. Yes. Just -- yes.</p> <p>127:20 Q. And are these --</p> | | |
| ☒ Clear | <p>127:21 A. Gaps between their practices</p> <p>127:22 which the experts thought were best practices</p> <p>127:23 and those which they didn't, the experts</p> <p>127:24 didn't feel were the best practices at the</p> <p>127:25 time.</p> | | |
| 132:15 - 132:25 | Brown, Karen 2014-04-23 | 00:00:42 | KBM.95 |
| | <p>132:15 Q. What was the concern or gap</p> <p>132:16 identified by the expert advisory panel with</p> <p>132:17 respect to space for egg laying hens?</p> <p>132:18 A. They were concerned that the</p> <p>132:19 timing needed to be pushed forward. In other</p> <p>132:20 words, they thought that the time that the</p> <p>132:21 industry was proposing for getting to the 72</p> <p>132:22 minimum, I presume, needed to be enhanced.</p> <p>132:23 Q. When you say "enhanced," you</p> <p>132:24 mean shortened?</p> <p>132:25 A. Sooner.</p> | | |
| 139:09 - 139:18 | Brown, Karen 2014-04-23 | 00:00:25 | KBM.96 |
| | <p>139:09 Q. Were your members apprised of</p> <p>139:10 the recommendations that, or the gaps that</p> <p>139:11 were identified by the expert --</p> <p>139:12 A. Yes.</p> <p>139:13 Q. -- panel?</p> <p>139:14 A. Yes. As I said before, we have</p> <p>139:15 a system of communication. And this document</p> <p>139:16 actually is sent to the members, so they</p> | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|-----------------|--|----------|---------|
| | 139:17 certainly were apprised of it through this. 139:18 Did they read UEP's guidelines? I doubt it. | | |
| 140:04 - 140:14 | Brown, Karen 2014-04-23 140:04 Q. And they also ranked those gaps 140:05 in order of priority. Correct? 140:06 A. They thought that the most 140:07 important gap from their perspective was the 140:08 one that was the most visible to the 140:09 consumer, their customers. And that was the 140:10 space allocation. And that was because it 140:11 was being focused on in the news media, by 140:12 the activists, letters they were getting from 140:13 PETA. That's why it became the most 140:14 important issue to them. | 00:00:35 | KBM.97 |
| 144:19 - 144:21 | Brown, Karen 2014-04-23 144:19 Q. And the experts identified the 144:20 ten-year phase-in requirement for the cage 144:21 space requirement as unacceptable. Correct? | 00:00:10 | KBM.98 |
| 144:24 - 144:25 | Brown, Karen 2014-04-23 144:24 THE WITNESS: They thought it 144:25 had -- it should be shortened. | 00:00:05 | KBM.99 |
| 147:02 - 147:06 | Brown, Karen 2014-04-23 147:02 Q. -- did FMI communicate to UEP 147:03 that the ten-year proposed phase-in was not 147:04 acceptable to FMI's expert advisory panel? 147:05 A. Yes. We told them that the 147:06 experts thought it should be shortened. | 00:00:16 | KBM.100 |
| 158:14 - 158:16 | Brown, Karen 2014-04-23 158:14 Q. I'm going to show you a 158:15 document that's been marked as Brown 158:16 Exhibit 10. | 00:00:04 | KBM.101 |
| 162:06 - 162:23 | Brown, Karen 2014-04-23 162:06 Q. And that is a faster phase-in 162:07 than what was proposed by UEP. Correct? 162:08 A. They were reducing it by 162:09 50 percent which would have taken the ten 162:10 years to five, so 18 months would be -- 162:11 Q. Even quicker. Right? 162:12 A. But, again, keep in mind, | 00:00:54 | KBM.102 |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
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| | 162:13 PETA's objective is not having any chickens, 162:14 any cows, any pigs, any ducks ever processed 162:15 for food to be eaten by any human on the 162:16 planet. So anything that they proposed, 162:17 which was always a moving target, was going 162:18 to be almost impossible to achieve because 162:19 that's their agenda. 162:20 Q. So they wanted it to be done 162:21 tomorrow? 162:22 A. They're all vegans. Very 162:23 irritable all the time, too. | | |
| 164:10 - 164:14 | Brown, Karen 2014-04-23 | 00:00:08 | KBM.103 |
| | 164:10 Q. I'm going to mark five 164:11 documents right now and just ask you a 164:12 question about all of them together, just 164:13 general question to hopefully identify them 164:14 quickly. | | |
| 166:18 - 166:25 | Brown, Karen 2014-04-23 | 00:00:31 | KBM.104 |
| | 166:18 Q. Ms. Brown, my first question to 166:19 you is, is each of the documents that have 166:20 just been marked as exhibits, Brown Exhibits 🔗 655.1 166:21 11 through 15, a summary, flip chart notes 🔗 683.1 166:22 summary of an animal welfare expert review 🔗 684.1 166:23 panel meeting that was prepared by you? 🔗 698.1 166:24 A. That's what they look like. 🔗 701.1 166:25 Q. And were these summaries | | |
| 167:02 - 167:20 | Brown, Karen 2014-04-23 | 00:00:42 | KBM.105 |
| | 167:02 created at or around the time of the meeting 167:03 identified at the top of the summary? 167:04 A. Yes. 167:05 Q. Did you attend each of these 167:06 meetings for which you created summaries? 167:07 A. Yes, as is stated on here. ☒ Clear 167:08 Q. And was it your practice to 167:09 record accurately in these summaries what 167:10 occurred at the meetings? 167:11 A. I recorded conclusions, 167:12 accurate conclusions, accurate 167:13 recommendations, on flip charts. 167:14 Q. And did you attend these | | |

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| DESIGNATION | SOURCE | DURATION | ID |
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| | 167:15 meetings as a senior vice president of FMI? 167:16 A. Yes. 167:17 Q. And were these meetings 167:18 maintained as part of the regular business of 167:19 FMI? 167:20 A. Yes. | | |
| 180:18 - 180:25 | Brown, Karen 2014-04-23 | 00:00:22 | KBM.106 |
| | 180:18 Q. You did testify before that 180:19 avoiding market disruption was something that 180:20 was important to your members as your members 180:21 considered animal welfare programs. Correct? 180:22 A. They certainly don't want to 180:23 end up with not having products that our 180:24 customers want. But in other words, 180:25 consumers want eggs. So they certainly | | |
| 181:02 - 181:11 | Brown, Karen 2014-04-23 | 00:00:34 | KBM.107 |
| | 181:02 wouldn't want -- they would be concerned 181:03 about any marketplace disruption. A disease 181:04 wipes out all the laying hens. A tornado 181:05 that takes out the largest supplier's egg 181:06 laying operation. A salmonella recall, of 181:07 which there had been several. So, yeah, we 181:08 would be concerned about any kind of 181:09 marketplace disruption that is going to 181:10 impact the ability of our consumers to buy 181:11 the products that they want to buy. | | |
| 191:24 - 191:25 | Brown, Karen 2014-04-23 | 00:00:05 | KBM.108 |
| 🔗 674.1 | 191:24 Q. Can you turn to the page that 191:25 is marked FMI-17. At the top it's entitled, | | |
| 192:02 - 192:16 | Brown, Karen 2014-04-23 | 00:00:36 | KBM.109 |
| 🔗 674.3.1 | 192:02 "THE GUIDELINES," and towards the bottom 192:03 there's a heading for "Laying Hens." 192:04 A. Yes. 192:05 Q. I want to focus on the laying 192:06 hens section. The first sentence reads, "FMI 192:07 and NCCR recommended to their members the 192:08 2002 guidelines of the United Egg 192:09 Producers...for use with their suppliers of 192:10 eggs and egg products." | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
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| | 192:11 A. Yes. 192:12 Q. Is that an accurate statement? 192:13 A. We recommended them as best 192:14 practices, and if they wanted to voluntarily 192:15 use that individually with their suppliers, 192:16 that was the intent of that sentence. | | |
| 192:25 - 192:25 | Brown, Karen 2014-04-23 | 00:00:03 | KBM.110 |
|  674.4 | 192:25 Q. Let's look at page 18. The | | |
| 193:02 - 193:13 | Brown, Karen 2014-04-23 | 00:00:40 | KBM.111 |
|  674.4.1 | 193:02 third bullet point down that page reads, "The 193:03 UEP phase-in timetable for increasing the 193:04 space allocation per bird (67 inches for 193:05 White Leghorn hens; 76 inches for Brown Egg 193:06 Layers) has been significantly shortened and 193:07 a minimum standard has been added for all new 193:08 and remodeled laying houses." 193:09 Do you see that? 193:10 A. Yes. 193:11 Q. And is that an example of a gap 193:12 that had been identified and addressed by UEP  Clear 193:13 to the animal -- well, and addressed by UEP? | | |
| 193:15 - 193:15 | Brown, Karen 2014-04-23 | 00:00:00 | KBM.112 |
| | 193:15 THE WITNESS: Yes. | | |
| 194:13 - 194:17 | Brown, Karen 2014-04-23 | 00:00:09 | KBM.113 |
| | 194:13 Q. Am I correct that one of the 194:14 gaps that FMI's experts have identified did 194:15 relate to feed withdrawal molting? 194:16 A. Yes, that is starving the 194:17 chickens, true. | | |
| 194:24 - 194:25 | Brown, Karen 2014-04-23 | 00:00:04 | KBM.114 |
| | 194:24 Q. Ms. Brown, I'd like to show you 194:25 a document that's been marked as Brown-22. | | |
| 195:02 - 195:11 | Brown, Karen 2014-04-23 | 00:00:39 | KBM.115 |
|  677.1 | 195:02 It bears the Bates FMI-2277 through 93. I'd 195:03 like to focus your attention on the second 195:04 page of this document. 195:05 A. Okay. 195:06 Q. And my question is, is this a | | |
|  677.2 | 195:07 copy of the 2002 UEP guidelines that FMI and | | |

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| | 195:08 NCCR recommended for their members as of 195:09 June 2002? 195:10 A. Yes, I presume so. They made a ☒ Clear 195:11 lot of changes. They didn't always change | | |
| 195:12 - 195:12 | Brown, Karen 2014-04-23 195:12 the covers, which is understandable. | 00:00:02 | KBM.116 |
| 196:05 - 196:07 | Brown, Karen 2014-04-23 196:05 Q. Ms. Brown, I want to show you 196:06 the next four exhibits. The first one marked 🔗 690.1 196:07 as Brown-23 is FMI-77 through 78. Brown-24 | 00:00:14 | KBM.117 |
| 196:08 - 196:08 | Brown, Karen 2014-04-23 🔗 693.1 196:08 is FMI-75. Brown-25 is FMI-76. And Brown-26 | 00:00:15 | KBM.118 |
| 196:09 - 196:25 | Brown, Karen 2014-04-23 🔗 697.1 196:09 is FMI-4436. 🔗 700.1 196:10 A. Yes. 196:11 Q. Do you recognize these 196:12 documents, Ms. Brown? 196:13 A. I do. 196:14 Q. What are they? ☒ Clear 196:15 A. They are status charts on where 196:16 the experts were on the guidelines that they 196:17 were reviewing. 196:18 Q. And did you draft these 196:19 documents? 196:20 A. I did. 196:21 Q. And in drafting them, was it 196:22 your intent that they be truthful and 196:23 accurate? 196:24 A. Yes. 196:25 Q. And do the reports reflect your | 00:00:39 | KBM.119 |
| 197:02 - 197:25 | Brown, Karen 2014-04-23 197:02 personal knowledge of the work on FMI's 197:03 animal welfare program and review of the 197:04 producer guidelines as of the dates they were 197:05 drafted? 197:06 A. My professional knowledge, yes. 197:07 Q. And did you draft these reports 197:08 as part of your regular business as senior 197:09 vice president of FMI? | 00:01:11 | KBM.120 |

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| DESIGNATION | SOURCE | DURATION | ID |
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| | <p>197:10 A. I did.</p> <p>197:11 Q. And were these kept in the</p> <p>197:12 regular course of FMI's business?</p> <p>197:13 A. Yes.</p> <p>197:14 Q. I'd like to direct your</p> <p>197:15 attention to the one that has been marked as</p> <p>197:16 exhibit, it's got the Bates number 76 at the</p> <p>197:17 bottom. I believe it's 25.</p> | | |
| 🔗 697.1 | <p>197:18 A. Yes.</p> <p>197:19 Q. And the second row down is</p> | | |
| 🔗 697.1.1 | <p>197:20 entitled UEP or "United Egg Producers." Do</p> <p>197:21 you see that?</p> <p>197:22 A. Yes.</p> <p>197:23 Q. And under "FMI-NCCR Endorsement."</p> <p>197:24 A. Yes.</p> <p>197:25 Q. Can you read to me what it says</p> | | |
| 198:02 - 198:09 | Brown, Karen 2014-04-23 | 00:00:21 | KBM.121 |
| | <p>198:02 next to "United Egg Producers"?</p> <p>198:03 A. "Endorsed production, handling,</p> <p>198:04 transportation, processing and euthanasia</p> <p>198:05 guidelines for layers of shell and breaking</p> <p>198:06 eggs..."</p> <p>198:07 Q. So at this point in time as of</p> <p>198:08 March 2007 FMI and NCCR endorsed the UEP</p> <p>198:09 guidelines. Correct?</p> | | |
| 198:13 - 198:16 | Brown, Karen 2014-04-23 | 00:00:16 | KBM.122 |
| ☒ Clear | <p>198:13 THE WITNESS: Yes, our advisors</p> <p>198:14 endorsed it. We went through this</p> <p>198:15 before. The FMI specifically we --</p> <p>198:16 our advisors endorsed the guidelines.</p> | | |
| 203:06 - 203:08 | Brown, Karen 2014-04-23 | 00:00:10 | KBM.123 |
| | <p>203:06 In your 2002 -- in your</p> <p>203:07 June 2002 interim report, if you pull that</p> <p>203:08 out again,</p> | | |
| 203:09 - 203:11 | Brown, Karen 2014-04-23 | 00:00:05 | KBM.124 |
| | <p>203:09 that exhibit?</p> <p>203:10 A. 19.</p> <p>203:11 Q. Yes, that was marked as</p> | | |
| 203:12 - 203:25 | Brown, Karen 2014-04-23 | 00:00:33 | KBM.125 |

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| DESIGNATION | SOURCE | DURATION | ID |
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| 🔗 674.1 | 203:12 Brown-19. In that report, the -- I want to 203:13 just direct your attention to the third page, 🔗 674.3 203:14 FMI-17, and this report was provided to all 203:15 of your members as well as to the public. 203:16 Correct? 203:17 A. Correct. 203:18 Q. In this report you wrote, "FMI 🔗 674.3.2 203:19 and NCCR recommend to their members the 2002 203:20 guidelines of the United Egg Producers...for 203:21 use with their suppliers for eggs and egg 203:22 products." 203:23 Do you see that? 203:24 A. I do. 203:25 Q. And that is an accurate | | KBM.125 |
| 204:02 - 204:03 | Brown, Karen 2014-04-23 | 00:00:02 | KBM.126 |
| ☒ Clear | 204:02 statement. Correct? 204:03 A. Yes. | | |
| 207:22 - 207:25 | Brown, Karen 2014-04-23 | 00:00:10 | KBM.127 |
| 🔗 686.1 | 207:22 Q. Let me show you a document 207:23 that's been marked as Brown-27. This is a 207:24 document bearing the Bates numbers FMI-1781 207:25 through 83. | | |
| 208:02 - 208:04 | Brown, Karen 2014-04-23 | 00:00:08 | KBM.128 |
| | 208:02 Ms. Brown, can you just take a 208:03 moment and review this e-mail chain and let 208:04 me know when you've done so. | | |
| 208:20 - 208:25 | Brown, Karen 2014-04-23 | 00:00:14 | KBM.129 |
| 🔗 686.2 | 208:20 Q. Is this a series of e-mails 208:21 that were exchanged between you and Brian 208:22 Joyer on -- between July 21 and 24, 2003, in 208:23 the course of your work as FMI's senior vice 208:24 president? 208:25 A. I think the original e-mail | | |
| 209:02 - 209:08 | Brown, Karen 2014-04-23 | 00:00:15 | KBM.130 |
| 🔗 686.2.1 | 209:02 went to Tim Hammonds and I was cc'd. 209:03 Q. But you were copied on all of 209:04 these e-mails -- 209:05 A. Yes. 209:06 Q. -- you either sent or received | | |

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| 🔗 686.2 | 209:07 them in the course of your work at FMI? 209:08 A. Yes. | | |
| 212:16 - 212:25 | Brown, Karen 2014-04-23 212:16 His e-mail to you, it starts on 212:17 1782. 212:18 A. Correct. 212:19 Q. Says, "There are three points I 212:20 wanted to clarify." And he's got three 212:21 asterisks -- three bullet points, asterisks, 212:22 whatever you want to call them. The first 212:23 one relates to audit issues. Correct? 212:24 A. Yes. 212:25 Q. I'm not asking you about the | 00:00:16 | KBM.131 |
| 213:02 - 213:10 | Brown, Karen 2014-04-23 213:02 audit. 213:03 A. Okay. | 00:00:19 | KBM.132 |
| 🔗 686.3 🔗 686.3.1 | 213:04 Q. His second question says, "What 213:05 is FMI/NCCR's position on implementing the 213:06 guidelines? Should a company allow the 213:07 marketplace to influence the amount of 213:08 products produced...or should the company 213:09 commit 100% of their products to the 213:10 guidelines regardless of the interest..." | | |
| 213:21 - 213:25 | Brown, Karen 2014-04-23 213:21 Q. What did -- you answered number 213:22 2. "Our goal is enhanced animal welfare for 213:23 all animals in food production - not animals 213:24 used only for certain products or product 213:25 categories. This is our position for all | 00:00:10 | KBM.133 |
| 214:02 - 214:20 | Brown, Karen 2014-04-23 214:02 producer groups." 214:03 A. That's true. 214:04 Q. That was indeed your position? 214:05 A. Yes. 214:06 Q. Why was that FMI's position? 214:07 A. Because all animals, what 214:08 difference does it make what product they're 214:09 going to be. They're all animals who are in 214:10 a system which needed to be improved | 00:00:59 | KBM.134 |
| ☒ Clear | | | |

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| DESIGNATION | SOURCE | DURATION | ID |
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| | 214:11 significantly. So if I'm a chicken whose 214:12 eggs are going into this product versus a 214:13 chicken whose eggs are going into that 214:14 product, why should that make any difference 214:15 as to how I'm handled as an animal. Why 214:16 should I be less humanely handled because of 214:17 what product I end up in, if I understand the 214:18 question. So if you come back as an animal, 214:19 you better make sure what kind you come back 214:20 as. | | |
| 215:07 - 215:25 | Brown, Karen 2014-04-23 | 00:01:02 | KBM.135 |
| | 215:07 Q. I've marked as Brown-28 a 215:08 document bearing the Bates FMI-3090 through 215:09 91. | | |
| 🔗 695.1 | 215:10 Ms. Brown, do you recognize 215:11 this as an e-mail conversation between you 215:12 and Gene Gregory that you sent and received 215:13 on or about May 20 -- May 2, 2003, May 2 to 215:14 3, 2003, in the course of your work at FMI? | | |
| | 215:15 A. That's what it looks like. | | |
| 🔗 695.1.3 | 215:16 Q. Let's focus on the first e-mail 215:17 in the chain which is from Gene to you and 215:18 Terrie Dort. Do you see that? | | |
| | 215:19 A. Yes. | | |
| 🔗 695.1 | 215:20 Q. Gene wrote to you that there 215:21 was a program that would implement a rule 215:22 that instead -- I'm at the very bottom of 215:23 page 1 where he says, Instead of implementing 215:24 animal welfare guidelines on 100% of their 215:25 egg-production houses, they would simply | | |
| 216:02 - 216:25 | Brown, Karen 2014-04-23 | 00:01:01 | KBM.136 |
| | 216:02 implement the guidelines on only the number 216:03 of hens it needed to fill a customer needs. 216:04 Do you see that? | | |
| | 216:05 A. Yes. | | |
| 🔗 695.2.2 | 216:06 Q. And then he says, "Should this 216:07 group seek to receive the endorsement of 216:08 either FMI or NCCR, we would hope that you 216:09 would respond by only endorsing UEP's 216:10 guidelines for egg-laying hens." | | |

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| DESIGNATION | SOURCE | DURATION | ID |
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| | 216:11 Do you see that? 216:12 A. Yes. 216:13 Q. And then your response, you 695.1.2 216:14 wrote, "On the second issue -- we have no 216:15 intention to endorse a second set of 216:16 guidelines for laying hens that are weaker 216:17 than the UEP guidelines." 216:18 Do you see that? 216:19 A. Yes. 216:20 Q. What do you mean by that? Clear 216:21 A. We were involved in a process 216:22 of making progressive changes to a system 216:23 that needed some significant changes. And we 216:24 were not interested in anything that would be 216:25 regressive. So if the guidelines were going | | |
| 217:02 - 217:07 | Brown, Karen 2014-04-23 217:02 to be weaker than UEP, which was the floor, 217:03 then that would be regressive. 217:04 Q. And did FMI consider guidelines 217:05 that were required to be implemented on less 217:06 than 100 percent of production houses to be 217:07 weaker than the UEP guidelines? | 00:00:23 | KBM.137 |
| 217:11 - 217:25 | Brown, Karen 2014-04-23 217:11 THE WITNESS: We did not get 217:12 into the issue of whether or not it 217:13 should be -- there's a difference 217:14 between -- if you mean 100 percent of 217:15 the houses for egg laying hens whose 217:16 products, whose eggs were going to be 217:17 divided into two different channels, 217:18 for example, shell eggs going in 217:19 cartons for consumers in the 217:20 supermarket or breaking eggs that were 217:21 going to be sold to Kraft and General 217:22 Foods and the people who use eggs in 217:23 their manufacturing product, and the 217:24 animals whose eggs were going into 217:25 shell eggs and those were the animals | 00:00:51 | KBM.138 |
| 218:02 - 218:15 | Brown, Karen 2014-04-23 218:02 whose handling was going to follow the | 00:00:44 | KBM.139 |

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| DESIGNATION | SOURCE | DURATION | ID |
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| | 218:03 UEP guidelines, and the other animals 218:04 whose eggs were going into 218:05 manufactured product, those animals' 218:06 handling was not going to be following 218:07 the UEP guidelines, that was a concept 218:08 that we would not agree with. That 218:09 gets back to the point of how we 218:10 handle the animal, how humanely we 218:11 handle the animal depends upon where 218:12 the end product ends up. That we did 218:13 not think was humane. So if that's 218:14 the context in which you're talking, 218:15 then that would be my response. It | | |
| 218:16 - 218:16 | Brown, Karen 2014-04-23 | 00:00:02 | KBM.140 |
| | 218:16 doesn't seem fair to the animals. | | |
| 231:23 - 232:11 | Brown, Karen 2014-04-23 | 00:00:26 | KBM.141 |
| | 231:23 Q. Do you know whether on an 231:24 ongoing basis, so we talked about how in the 231:25 initial endorsement was of the 2002 UEP 232:01 232:02 guidelines, do you remember that? 232:03 A. With exceptions. 232:04 Q. Yeah, right. With the 232:05 exceptions noted. And eventually the 232:06 endorsement status on that chart got to the 232:07 point where there were no exceptions. 232:08 Correct? 232:09 A. For UEP. 232:10 Q. For UEP, yes. Is that correct? 232:11 A. Correct. | | |
| 251:12 - 251:20 | Brown, Karen 2014-04-23 | 00:00:34 | KBM.143 |
| | 251:12 Q. Was UEP ever -- did UEP ever 251:13 communicate to you that it would prefer to 251:14 maintain control of any audits using their 251:15 Animal Welfare Guidelines? 251:16 A. They definitely felt strongly 251:17 about doing their own audit. 251:18 Q. Did they ever tell you that the 251:19 reason for that was so they could enforce 251:20 compliance with the UEP Certified Program? | | |

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| DESIGNATION | SOURCE | DURATION | ID |
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| 251:22 - 251:22 | Brown, Karen 2014-04-23 251:22 THE WITNESS: They may have. | 00:00:01 | KBM.144 |
| 251:23 - 252:03 | Brown, Karen 2014-04-23 251:23 BY MR. WILDERS: 251:24 Q. And did UEP ever tell you that 251:25 they were using the Animal Welfare Guidelines 252:01 252:02 as a supply and management tool among their 252:03 members? | 00:00:11 | KBM.145 |
| 252:06 - 252:07 | Brown, Karen 2014-04-23 252:06 THE WITNESS: I never heard 252:07 anything like that. | 00:00:02 | KBM.146 |
| 252:09 - 252:13 | Brown, Karen 2014-04-23 252:09 Q. Did UEP ever disclose to you 252:10 that their goal with the Animal Welfare 252:11 Program was to develop a certified program 252:12 that would increase egg prices in the U.S. 252:13 market? | 00:00:12 | KBM.147 |
| 252:16 - 252:17 | Brown, Karen 2014-04-23 252:16 THE WITNESS: I personally did 252:17 not have any conversations like that. | 00:00:03 | KBM.148 |
| 252:19 - 252:23 | Brown, Karen 2014-04-23 252:19 Q. If UEP had told you that they 252:20 were using the Animal Welfare Guidelines to 252:21 reduce supply or increase price, would that 252:22 have impacted FMI's review of the UEP 252:23 guidelines? | 00:00:13 | KBM.149 |
| 252:25 - 253:03 | Brown, Karen 2014-04-23 252:25 THE WITNESS: It certainly would 253:01 253:02 have impacted our relationship and 253:03 conversations with UEP. | 00:00:04 | KBM.150 |
| 260:11 - 263:15 | Brown, Karen 2014-04-23 🔗 P338.1.4 260:11 Q. Let me hand you Exhibit 34. 260:12 Can you identify this as a document -- an 🔗 P338.1.1 260:13 e-mail you wrote on August 22, 2003, to Gene 260:14 Gregory? 260:15 A. Yes. | 00:03:19 | KBM.151 |

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| DESIGNATION | SOURCE | DURATION | ID |
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| 🔗 P338.1 | <p>260:16 Q. Is this a true and accurate</p> <p>260:17 copy of the e-mail you wrote on that date?</p> <p>260:18 A. It seems to be.</p> <p>260:19 Q. Is this something you kept in</p> <p>260:20 the ordinary course of business at FMI?</p> <p>260:21 A. Yes.</p> <p>260:22 Q. Let's move down to the first</p> | | |
| 🔗 P338.1.2 | <p>260:23 e-mail in that train, that e-mail chain from</p> <p>260:24 Gene Gregory. It says, Karen, Just to keep</p> <p>260:25 you informed: Albertsons is now bidding</p> <p>261:01</p> <p>261:02 their egg business out all across the</p> <p>261:03 country. This will likely result in a</p> <p>261:04 competitive situation that lowers our</p> <p>261:05 producers' prices. Albertsons has also</p> <p>261:06 required the Animal Care Certified Program up</p> <p>261:07 to this point but refused to pay the</p> <p>261:08 additional costs for the program. They are</p> <p>261:09 now saying to some bidders that they don't</p> <p>261:10 have to be on the Animal Care program. I</p> <p>261:11 believe Albertsons was one of your leaders</p> <p>261:12 and a member of your committee that called</p> <p>261:13 for the establishment of guidelines.</p> <p>261:14 "If other retailers follow this</p> <p>261:15 direction, it could have a major negative</p> <p>261:16 impact upon our guidelines."</p> <p>261:17 Do you see that?</p> <p>261:18 A. I do.</p> <p>261:19 Q. What did you understand Mr.</p> <p>261:20 Gregory to be communicating to you here?</p> <p>261:21 A. Something he shouldn't have.</p> | | |
| 🔗 P338.1.3 | <p>261:22 My response was, "Gene -- these are terms of</p> <p>261:23 trade between retailers and their suppliers.</p> <p>261:24 It is not appropriate information to be</p> <p>261:25 shared or discussed with trade associations.</p> <p>262:01</p> <p>262:02 Please do not send me this type of</p> <p>262:03 information. Thank you, Karen."</p> <p>262:04 Q. Did you receive a response from</p> <p>262:05 Mr. Gregory?</p> <p>262:06 A. Not that I'm aware of.</p> | | |

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| DESIGNATION | SOURCE | DURATION | ID |
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| <input checked="" type="checkbox"/> Clear | <p>262:07 Q. And did -- is that true, that</p> <p>262:08 FMI members were free to negotiate prices</p> <p>262:09 with their suppliers?</p> <p>262:10 A. We didn't get involved in any</p> <p>262:11 of that. That's their business and that's</p> <p>262:12 not our business. Those are as stated,</p> <p>262:13 individual terms of trade between retailers</p> <p>262:14 and suppliers and not an area that's</p> <p>262:15 appropriate at all for a trade association to</p> <p>262:16 be involved.</p> <p>262:17 Q. And when you talk about terms</p> <p>262:18 of the trade, what types of things does terms</p> <p>262:19 of trade encompass?</p> <p>262:20 A. Well, if you're a retailer,</p> <p>262:21 you're going to be buying products from the</p> <p>262:22 supplier and you have certain terms that you</p> <p>262:23 would require and the supplier has certain</p> <p>262:24 terms that they require in order to make a</p> <p>262:25 sale.</p> <p>263:01</p> <p>263:02 Q. And if a retailer was</p> <p>263:03 negotiating the purchase of eggs from a</p> <p>263:04 supplier, and they decided that they wanted</p> <p>263:05 eggs that were consistent with the animal</p> <p>263:06 welfare best practices, but the supplier</p> <p>263:07 produced other eggs that were not consistent</p> <p>263:08 with the animal welfare best practices, was</p> <p>263:09 the retailer free to buy eggs from that</p> <p>263:10 supplier?</p> <p>263:11 A. FMI would have nothing to do</p> <p>263:12 with that. We wouldn't have that kind of</p> <p>263:13 conversation and we would not be involved in</p> <p>263:14 anything that goes on between the buyer and</p> <p>263:15 seller.</p> | | |
| 265:10 - 265:11 | Brown, Karen 2014-04-23 | 00:00:05 | KBM.152 |
| | <p>265:10 Q. Let me hand you another e-mail</p> <p>265:11 that's been marked Brown Exhibit 35. Is this</p> | | |
| 265:12 - 265:25 | Brown, Karen 2014-04-23 | 00:00:33 | KBM.153 |
| <input checked="" type="checkbox"/> P860.1.2 | <p>265:12 an e-mail from, at least the first e-mail</p> <p>265:13 from Tim Hammonds to you on May 20, 2004?</p> | | |

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| DESIGNATION | SOURCE | DURATION | ID |
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| 🔗 P860.1.1 | <p>265:14 A. Yes, that's what it looks like.</p> <p>265:15 Q. Does this appear to be a true</p> <p>265:16 and correct copy of e-mail correspondence</p> <p>265:17 that he sent to you on that date?</p> <p>265:18 A. I presume so.</p> | | |
| 🔗 P860.1 | <p>265:19 Q. Is this an e-mail that you</p> <p>265:20 would have kept in your file as an ordinary</p> <p>265:21 business record?</p> <p>265:22 A. Yes.</p> <p>265:23 Q. And kept in the ordinary course</p> <p>265:24 of business?</p> <p>265:25 A. Right. Yes.</p> | | |
| 266:11 - 268:16 | Brown, Karen 2014-04-23 | 00:02:22 | KBM.154 |
| 🔗 P860.1.3 | <p>266:11 Q. So if we look at the very first</p> <p>266:12 e-mail on May 20, 2004, from</p> <p>266:13 karenconrad@unitedegg.com to Tim Hammonds.</p> <p>266:14 Do you see that?</p> <p>266:15 A. I see that.</p> <p>266:16 Q. Do you know who Karen Conrad</p> <p>266:17 was?</p> <p>266:18 A. I don't remember.</p> <p>266:19 Q. It reads, "Hi Tim, Thanks for</p> <p>266:20 meeting with Gene and I last week."</p> <p>266:21 It says, "UEP produces a</p> <p>266:22 newsletter for its members called 'United</p> <p>266:23 Voices'. It is a bi-monthly publication that</p> <p>266:24 is mailed out, put out on our website and</p> <p>266:25 sent via email to our members.</p> <p>267:01</p> <p>267:02 "Would you be willing to write</p> <p>267:03 a short (1/2 page) article for us relating to</p> <p>267:04 why producers should 'stay the course' and</p> <p>267:05 continue to provide leadership and support</p> <p>267:06 for UEP's Animal Care Certified program?</p> <p>267:07 Also something regarding the continued use of</p> <p>267:08 the seal on our egg cartons for informing</p> <p>267:09 customers."</p> <p>267:10 Did I read that correctly?</p> <p>267:11 A. Yes.</p> | | |
| 🔗 P860.2.1 | <p>267:12 Q. What did you understand -- let</p> | | |
| 🔗 P860.1 | | | |

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| DESIGNATION | SOURCE | DURATION | ID |
|-----------------|---|----------|---------|
| | 267:13 me back up. 267:14 Mr. Hammonds then forwarded the P860.1.4 267:15 e-mail to you on the same day, May 20, 2004, 267:16 didn't he? 267:17 A. Yes, I see that. 267:18 Q. What did you understand United 267:19 Egg to be asking here? P860.1.5 267:20 A. Well, my response was "We can 267:21 draft something saying we appreciate their 267:22 efforts and support of their customers...," 267:23 meaning retailers, "...but we can't tell them 267:24 to 'stay the course' [implied pressure] or 267:25 'endorse' their labeling program. I am happy 268:01 268:02 to draft something. It would be best if it 268:03 was signed by you and Terrie." 268:04 Q. What did you -- what did you 268:05 mean when you wrote "implied pressure"? Clear 268:06 A. Well, pressuring them to go in 268:07 a certain direction. 268:08 Q. What do you mean pressure -- 268:09 when you say "them," do you mean the egg 268:10 producers, the members of UEP? 268:11 A. Yes. 268:12 Q. So you understood United Egg 268:13 Producers to be asking FMI to write something 268:14 to pressure the producers to stay on or join 268:15 the Animal Care Certified Program of UEP? 268:16 A. Correct. | | |
| 270:05 - 270:13 | Brown, Karen 2014-04-23 | 00:00:26 | KBM.155 |
| | 270:05 Q. Did FMI ever endorse the UEP 270:06 certified label? 270:07 A. No. 270:08 Q. So the testimony you've been 270:09 giving about, you know, FMI Scientific 270:10 Committee reviewing, potentially endorsing 270:11 some of the Animal Welfare Guidelines, did 270:12 that relate to the guidelines themselves or 270:13 the guidelines and the UEP certified label? | | |
| 270:16 - 270:21 | Brown, Karen 2014-04-23 | 00:00:18 | KBM.156 |

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| DESIGNATION | SOURCE | DURATION | ID |
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| | 270:16 THE WITNESS: That related only 270:17 to the guidelines. It was our belief 270:18 that industry devising its own label 270:19 for a program that it developed and 270:20 then audited itself had a lot of 270:21 issues regarding credibility. | | KBM.156 |
| 271:04 - 271:05 | Brown, Karen 2014-04-23 | 00:00:06 | KBM.157 |
| | 271:04 Q. Let me hand you another e-mail 271:05 from Mr. Gregory to you that I'm marking | | |
| 271:06 - 272:02 | Brown, Karen 2014-04-23 | 00:00:51 | KBM.158 |
| 🔗 P861.1.6 | 271:06 Brown-36. Is this an e-mail that you 271:07 received from Mr. Gregory on October 18, | | |
| 🔗 P861.1.1 | 271:08 2004? 271:09 A. It appears so. 271:10 Q. And does it appear to be a true 271:11 and accurate copy of the communication he 271:12 sent to you on that date? 271:13 A. Yes. 271:14 Q. And is this an e-mail that you 271:15 would have kept in the ordinary course of 271:16 business while at FMI? 271:17 A. Yes. 271:18 Q. Mr. Gregory -- and this e-mail 271:19 on October 18, 2004, Mr. Gregory writes, 🔗 P861.1.2 | | |
| | 271:20 "Karen, The egg industry is now experiencing 271:21 severe low egg prices. Prices far below the 271:22 costs of production." Let's just stop right 271:23 there for a second. 271:24 Do you think that was an 271:25 appropriate message for Mr. Gregory to be 272:01 272:02 sending to you at FMI? | | |
| 272:05 - 272:05 | Brown, Karen 2014-04-23 | 00:00:01 | KBM.159 |
| | 272:05 THE WITNESS: -- I do not. | | |
| 275:03 - 276:03 | Brown, Karen 2014-04-23 | 00:01:22 | KBM.160 |
| 🔗 P861.1.3 | 275:03 Q. He also goes on to write in the 275:04 sixth paragraph, sixth paragraph, "We are 275:05 also hearing from some of your members that 275:06 they are no longer requiring Animal Care | | |

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| DESIGNATION | SOURCE | DURATION | ID |
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| | <p>275:07 Certified eggs so you may be losing some of</p> <p>275:08 your member support for the program that we</p> <p>275:09 all worked on for so long and hard."</p> <p>275:10 What did you understand him to</p> <p>275:11 be communicating to you there?</p> | | |
| 🔗 P861.1 | <p>275:12 A. Make their problem our problem.</p> <p>275:13 Q. What do you mean by "their</p> <p>275:14 problem"?</p> <p>275:15 A. FMI had no role in what was</p> <p>275:16 going on within UEP's membership as regard to</p> <p>275:17 these issues mentioned in this e-mail.</p> <p>275:18 Q. And did you, after receiving</p> <p>275:19 this letter, do anything to, as he puts it,</p> <p>275:20 provide in keeping your members committed to</p> <p>275:21 the program?</p> <p>275:22 A. Probably not.</p> <p>275:23 Q. And while you were at FMI, did</p> <p>275:24 you take any action to try to force members</p> <p>275:25 into only buying eggs consistent with the UEP</p> <p>276:01</p> <p>276:02 Certified Program?</p> <p>276:03 A. Never.</p> | | |
| 276:12 - 276:18 | Brown, Karen 2014-04-23 | 00:00:14 | KBM.161 |
| 🔗 P861.1.4 | <p>276:12 Q. The last paragraph, third to</p> <p>276:13 the last paragraph here says, second</p> <p>276:14 sentence, "I think it is critically important</p> <p>276:15 that we work together to keep this good</p> <p>276:16 program going. Any message from you that we</p> <p>276:17 could convey to our members would certainly</p> <p>276:18 help."</p> | | |
| 284:19 - 284:22 | Brown, Karen 2014-04-23 | 00:00:10 | KBM.162 |
| ☒ Clear | <p>284:19 Q. And does that refresh your</p> <p>284:20 recollection as to what you understood the</p> <p>284:21 100 percent rule to mean while you were at</p> <p>284:22 FMI?</p> | | |
| 284:25 - 284:25 | Brown, Karen 2014-04-23 | 00:00:01 | KBM.163 |
| | 284:25 THE WITNESS: I understood that | | |
| 285:02 - 285:25 | Brown, Karen 2014-04-23 | 00:01:26 | KBM.164 |
| | 285:02 there was a sector or -- of the UEP | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
|-----------------|---|----------|---------|
| | <p>285:03 membership or there were some</p> <p>285:04 companies within the UEP membership</p> <p>285:05 that wanted to determine which of</p> <p>285:06 their animals were humanely treated</p> <p>285:07 according to the guidelines based on</p> <p>285:08 what were the egg ended up. And the</p> <p>285:09 way I understood it was that shell</p> <p>285:10 eggs which go in cartons for consumers</p> <p>285:11 to buy were the eggs that some</p> <p>285:12 companies that were in the business of</p> <p>285:13 two kinds of egg laying operations</p> <p>285:14 wanted those eggs to be under the UEP</p> <p>285:15 program. Those animals. Animals who</p> <p>285:16 were laying eggs for breaking</p> <p>285:17 operation which were basically going</p> <p>285:18 to end up in products manufactured by</p> <p>285:19 other companies such as cereal</p> <p>285:20 companies or cookie companies, et</p> <p>285:21 cetera, that those animals did not --</p> <p>285:22 they did not want them to be under the</p> <p>285:23 UEP guidelines. They did not want</p> <p>285:24 them to be handled as humanely under</p> <p>285:25 the UEP guidelines. That's what I</p> | | |
| 286:02 - 286:04 | Brown, Karen 2014-04-23 | 00:00:08 | KBM.165 |
| | <p>286:02 understand the 100 percent rule to be.</p> <p>286:03 I just didn't understand it as a</p> <p>286:04 separate term.</p> | | |

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| 306:08 - 306:25 | Brown, Karen 2014-04-23 | 00:01:04 | KBM.166 |
| | <p>306:08 Q. In general terms, what was the</p> <p>306:09 goal of FMI's membership in initiating this</p> <p>306:10 process with respect to animal welfare?</p> <p>306:11 A. The primary goal, because they</p> <p>306:12 knew that consumers were looking to them --</p> <p>306:13 the retailer is very visible and very</p> <p>306:14 accessible to the general public. There is</p> <p>306:15 no way that really they can run and hide.</p> <p>306:16 People are in their stores every day and they</p> <p>306:17 hear from their customers on a daily basis</p> <p>306:18 about what it is they like and what they</p> <p>306:19 don't like. When issues become priority</p> | | |

KBM

| DESIGNATION | SOURCE | DURATION | ID |
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| | 306:20 issues because of media and other public 306:21 attention to it, the retailer hears about it, 306:22 and within that context, the retailer's goal 306:23 with animal welfare was to assure that 306:24 animals in the agriculture system used as 306:25 food would be raised, transported and | | |
| 307:02 - 307:03 | Brown, Karen 2014-04-23 | 00:00:07 | KBM.167 |
| | 307:02 processed in a safe manner that was free from 307:03 abuse and neglect. | | |
| 323:08 - 323:15 | Brown, Karen 2014-04-23 | 00:00:25 | KBM.168 |
| | 323:08 Q. Did you ever inform UEP that 323:09 you were supporting efforts to reduce the 323:10 domestic flock size for egg laying hens? 323:11 A. We would never have made that 323:12 kind of a statement. I'd be fired. 323:13 Q. Are you aware of whether any 323:14 FMI members ever made any statements to that 323:15 effect? | | |
| 323:17 - 324:23 | Brown, Karen 2014-04-23 | 00:01:32 | KBM.169 |
| | 323:17 THE WITNESS: I'm not aware of 323:18 any such statements. 323:19 BY MR. RANDALL: 323:20 Q. Did you ever inform FMI's 323:21 membership that the UEP guidelines would lead 323:22 to a reduction in the domestic flock of egg 323:23 laying hens? 323:24 A. I don't recall ever doing that 323:25 myself. I don't recall. I mean, I -- it 324:01 324:02 would be highly unusual for me to do that. 324:03 Q. If you had done so, would you 324:04 have done that in writing? 324:05 A. I hope not. 324:06 MR. GREEN: You might want to 324:07 clarify that. 324:08 THE WITNESS: I meant that as a 324:09 joke. Only within the context of all 324:10 the pieces of paper I see here where I 324:11 wouldn't have written those things. 324:12 No, I would not have done that. I | | |

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| DESIGNATION | SOURCE | DURATION | ID |
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| | 324:13 would not have made that statement to 324:14 our members directly and I would not 324:15 have put it in writing. 324:16 BY MR. RANDALL: 324:17 Q. Did you intend to encourage the 324:18 egg producers to reduce the domestic flock of 324:19 egg laying hens? 324:20 A. No. 324:21 Q. Do you believe anything that 324:22 you said or that FMI said to UEP could be 324:23 construed as encouraging that? | | |
| 325:03 - 325:10 | Brown, Karen 2014-04-23 | 00:00:19 | KBM.170 |
| | 325:03 THE WITNESS: No. All we were 325:04 talking to UEP about was their 325:05 guidelines as analyzed by our expert 325:06 advisory committee and what the expert 325:07 advisory committee's recommendations 325:08 were to the UEP in the areas where 325:09 they needed to improve them and the 325:10 areas where they had done a good job. | | |
| 326:08 - 326:14 | Brown, Karen 2014-04-23 | 00:00:25 | KBM.171 |
| | 326:08 Q. With that in mind, did you 326:09 ever -- did you or FMI ever endorse the 326:10 100 percent rule? 326:11 A. Not to my knowledge. We 326:12 endorsed their -- our experts endorsed their 326:13 guidelines. We did not get into endorsing 326:14 the execution of their program. | | |
| 327:02 - 327:04 | Brown, Karen 2014-04-23 | 00:00:06 | KBM.172 |
| | 327:02 Q. Are you aware of any of FMI's 327:03 members ever endorsing the 100 percent rule? 327:04 A. Not that I'm aware of. | | |
| 329:14 - 329:17 | Brown, Karen 2014-04-23 | 00:00:13 | KBM.173 |
| | 329:14 Q. Now, were you aware that UEP 329:15 and UEP members coordinated at various times 329:16 joint efforts to reduce their flock sizes by 329:17 5 percent? | | |
| 329:18 - 329:18 | Brown, Karen 2014-04-23 | 00:00:01 | KBM.174 |
| | 329:18 A. Absolutely not. | | |

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| DESIGNATION | SOURCE | DURATION | ID |
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| 329:21 - 329:23 | Brown, Karen 2014-04-23 | 00:00:03 | KBM.175 |
| | 329:21 Q. Did you ever endorse that 329:22 practice? 329:23 A. No. | | |

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| 331:14 - 331:19 | Brown, Karen 2014-04-23 | 00:00:12 | KBM.176 |
| | 331:14 Q. What is forced molting? 331:15 A. You starve the chicken so that 331:16 it will lay eggs faster. 331:17 Q. Do you believe that forced 331:18 molting is consistent with animal welfare? 331:19 A. No. | | |

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| Defense | 00:53:36 |
| Plaintiff | 00:16:18 |
| TOTAL RUN TIME | 01:09:55 |



Documents linked to video:

655

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686

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693

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697

698

700

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P338

P860

P861